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Testimony
Before the Task Force on Improving the National Environmental Policy Act of the
Committee on Resources
United States House of Representatives

Field Hearing on The Role of NEPA in the Intermountain States
August 1, 2005

Good morning Mr. Chairman and Task Force members. Thank you for this opportunity to share with you some thoughts about how the National Environmental Policy Act (NEPA) might be strengthened and improved.

First, I would like to give you a brief history of the Middle Rio Grande Conservancy District, where I have served as biologist/planner since 1997. The Conservancy District is a political subdivision of the State of New Mexico, formed in 1925 as a direct result of the earlier efforts of Aldo Leopold and many others to cope with the flooding and waterlogged soils that damaged tens of thousands of acres of previously productive farmland along the Rio Grande. The Conservancy District now supplies irrigation water, flood control, and drainage services to some 277,000 acres of land, of which about 60,000 is irrigated. We serve about 11,000 farmers, including members of six Indian Pueblos. The oldest canal in our system has been in continuous use since about 1700, and archeologists tell us that irrigated agriculture has been practiced in the middle Rio Grande valley for at least 800 years.

NEPA is an important fact of life for any non-Federal agency, such as ours, that deals with Federal agencies, Federal laws, and Federal money. The Conservancy District, as a founding member of the Middle Rio Grande Endangered Species Collaborative Program, has been involved in what has become a multi-year process of developing an Environmental Impact Statement for this Program. The Program will likely be authorized by Congress in 2006, and the Federal agencies in good faith initiated the NEPA process in 2003, in part to make sure that all-important Federal funds would continue to be available for habitat rehabilitation and research to protect and recover the endangered Rio Grande silvery minnow and southwestern willow flycatcher in central New Mexico.

Although Federal agencies have evolved sophisticated rules to make NEPA as productive as possible, the Conservancy District views much of what NEPA itself now requires as largely irrelevant to effective environmental decision-making. Specifically with respect to the Endangered Species Collaborative Program, the NEPA process has been for the most part unproductive, and has consumed resources in an administrative procedure, thus preventing those resources from being used to protect and recover endangered species.

There are three reasons for this unfortunate situation.

1. NEPA dictates that environmental analysis be artificially restricted to a limited time period, so that developments after some arbitrary cutoff date cannot be considered. This is unrealistic because it ignores the fact that human thinking and planning proceeds incrementally. No Federal project is constructed precisely as it is initially envisioned; changes in design and specifications are continuous, right up until construction begins. Likewise, no Federal decision is made without taking into consideration developments that occur right up until the moment the decision is final. But NEPA cannot cope with incremental change, or new information, or with changes in scope or facts or partners that come after the arbitrary cutoff date.

Recommendation: Revise NEPA so that Federal agencies are not only allowed, but encouraged, to conduct the important environmental analyses required by NEPA in the same incremental manner that projects are designed and that decisions are made.

2. The way NEPA is structured, and the way it is currently applied, seems to assume that all Federal decisions are bad for the environment, and that the only way to offset the bad is to spend money to describe the resources that those bad decisions will damage. While this reasoning may be appropriate for an armored vehicle proving ground, or a decision to dispose of radioactive waste, it is fundamentally flawed when applied to a Federal decision to protect and recover endangered species. While it is reasonable to expect that Federal agencies would professionally evaluate the consequences of such a decision, it is not reasonable to force such an analysis into the straight jacket that is the current NEPA process.

Recommendation: Revise NEPA to provide a screening method to allow exclusion from the NEPA process for Federal decisions that support mandatory environmental programs (such as the recovery of endangered specie), and establish for those decisions a more flexible and expeditious analytical framework that is predicated upon use of the best science currently available.

3. NEPA originally needed to be comprehensive, because there were few precedents. Now, some thirty years later, there are many alternative strategies for achieving the same environmental objectives, and NEPA should be adaptively revised (e.g., using principles of adaptive management) to incorporate what society has learned in the interim and to eliminate those among the original requirements that are no longer necessary or appropriate. For example, Canada developed an approach to NEPA-like analyses that has some worthwhile features, such as the way they deal with incremental project planning and development. Other examples from Germany, The Netherlands, and Great Britain may also provide appropriate alternatives.

Recommendation: Review environmental policy acts from other countries to see if some of their elements could be adopted in a revised NEPA to meet current U.S. environmental policy objectives.